

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 321 of 2000

in

SPECIAL CIVIL APPLICATION No 13783 of 1993

WITH

CIVIL APPLICATION No.6145 of 2000

AND

LETTERS PATENT APPEAL No.322 of 2000

in

SPECIAL CIVIL APPLICATION No.10755 of 1993

WITH

CIVIL APPLICATIONS Nos.6146/2000 & 6148/2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

LOTUS HOTEL PVT LTD

THROUGH ADD MANAGING DIRECTOR

Versus

BANK OF BARODA

Appearance:

LETTERS PATENT APPEALS Nos. 321/2000 & 322/2000

MR NK MAJMUDAR for Appellant

Civil Application Nos.6145/2000, 6146/2000 & 6148/2000

Shri Chandulal Jethalal Jaiswal, applicant is present
in person.

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE R.R.TRIPATHI

Date of decision: 31/07/2000

ORAL JUDGEMENT : (Per M.R. Calla, J.)

The two Letters Patent Appeals Nos.321/2000 and 322/2000 are directed against the common judgement and order dated 28.3.2000 passed by the learned Single Judge in Special Civil Applications Nos.10755/93 & 13783 of 1993, whereby the learned Single Judge has rejected both these Special Civil Applications.

2. Both these Special Civil Applications were admitted by a common order dated 24.4.1994. Paras 8 and 9 of the said order are reproduced as under :

"8. In the premises aforesaid I am required to consider whether the present petitions require to be admitted or whether the same should be rejected summarily. Prima facie I am of the opinion that it may be difficult for the petitioner to establish any right or rights as asserted in the petition with a view to justify the prayers made therein. However, I am inclined to take a slightly optimistic view in the matter with the limited objective of granting some additional thinking time to the parties and particularly the petitioner in the hope that commercial wisdom will prevail over more aggressive assertion of so called legal rights. In short, I am inclined to admit the petitions not unnecessarily because I am satisfied that the petitioner has made out a prima facie case, but only because I am conscious that the summary rejection at this stage, although justified, would irrevocably terminate the business relations between the parties. I also consider the possibility that the intervention of the court at the final hearing stage may perhaps

bring about a practical solution. It is only for this reason that I direct the present petitions to be admitted. Accordingly rule is issued in both the petitions and the said petitioners are directed to be placed on the final hearing board in the third week of June 1994.

" So far as interim relief is concerned, prayers in this regard must be weighed not merely in the light of the present circumstances, but also in the light of the previous history of the parties, both in terms of their commercial relationship as also in terms of the previous litigation undertaken by them. The balance of equity is also required to be borne in mind. It must also be borne in mind that the prayer for interim relief made in the present petition, if seriously considered, or if considered for the purpose of being granted, would in effect allow the petitions at this stage. Clearly this is not permissible. Thus, on a balance of a total consideration of all the facts and prevailing circumstances, interim relief in Special Civil Application No.10755 of 1993 is refused. However, it is clarified that the ad interim relief granted in the said petition shall continue to operate upto 30th June 1994, and in case this petition is not heard by the said date, it shall be open to the respondent Corporation to move for a modification of the said ad interim relief. So far as Special Civil Application No.13783 of 1993 is concerned, no ad interim relief was granted at the notice stage and in any case, the prayers made therein cannot even be considered. For this reason interim relief in Special Civil Application No.13783 of 1993 is refused."

3. Special Civil Application No.10755 of 1993 was filed against the Gujarat State Financial Corporation ("GSFC") and Messrs Jai Laxmi Land Developers and the other petition, Special Civil Application No.13783 of 1993 is directed against the Bank of Baroda as respondent no.1 and GSFC as respondent no.2. Grievances have been raised against the GSFC with regard to the proceedings taken against the petitioner under section 29 of the State Financial Corporations Act, 1951 for recovery of the loan and the due amount thereon and the auction of the properties for which notice was issued on 21.10.1995 in pursuance of which auction was held on 13.11.1995 and the properties were sold out in the auction to Jai Laxmi

Land Developers for a sum of Rs.2,77,77,777/-. The grievance raised in Special Civil Application No.13783 of 1993 against the Bank of Baroda is that as against the demand of loan of Rs.51 lakhs, only a sum of Rs.25 lakhs was sanctioned and advanced and therefore, a direction was sought against the Bank of Baroda to advance a further loan of Rs.26 lakhs. A further prayer was also made for additional term loan of Rs.68 lakhs. A direction was also sought against the GSFC in this very petition to furnish an unconditional and irrevocable guarantee to the Bank of Baroda in favour of the petitioner in respect of its so called obligation to release an amount of Rs.26 lakhs forthwith. A prayer was also made in this petition against the GSFC for quashing and setting aside the notice of auction and that transaction of sale of the properties of petitioner no.1 situated in Survey No.512/2/1 with standing construction thereon at the rate of Rs.2,77,77,777/- to Messrs Jai Laxmi Construction Company at Anand and any consequent transaction thereof entered into between GSFC and Messrs Jailaxmi Construction Company and in respect of any other person. When these petitions came up for final hearing, the learned Single Judge having heard both the sides passed the impugned order dated 28.3.2000, whereby both the petitions were dismissed and against this order dated 28.3.2000, passed by the learned Single Judge, the present Letters Patent Appeals have been filed by Lotus Hotels Pvt. Ltd. through its Additional Managing Director, Jayendra Chandulal Jaiswal.

4. It was way back in the year 1977 that the loan was applied for by the appellant from GSFC. The loan for a sum of Rs.29.93 lakhs was sanctioned, but the amount was not disbursed. The appellant then preferred Special Civil Application and that Special Civil Application was allowed on 2.2.1981. The GSFC had preferred Letters Patent Appeal which was dismissed by the Division Bench of this Court on 12.10.1981. Against that order, the GSFC had preferred Special Leave Petition before the Honourable Supreme Court, which was dismissed on 3.3.1983. The amount of sanctioned loan was released from time to time and was paid by the end of 1984. The learned Single Judge in his judgement has given the entire history of the litigation which has taken place between the parties with regard to the loan as above and repayment thereof and the proceedings which have taken place thereafter under sec.29 as also the civil litigation which has been filed. In para 21 of the judgement, the learned Single Judge has observed that the petitioners were given ample opportunity to make a settlement with the respondents, GSFC and Bank of Baroda,

for business transactions by this Court, but the petitioner was not able to make out any settlement with the respondent corporation or the respondent Bank of Baroda, for which this Court admitted these petitions; that the petitioner has taken a loan of Rs.29.93 lakhs from the respondent, GSFC and Rs.25 lakhs from the Bank of Baroda. However, he has not paid a single paise towards the dues of the loan amount to the respondent corporation or the Bank of Baroda till date of the order passed by the learned Single Judge. The learned Single Judge did not, therefore, find any good reason to exercise the extraordinary jurisdiction under Article 226 of the Constitution of India and both the petitions were rejected.

5. We have heard learned counsel for the appellant at length and have gone through the order passed by the learned Single Judge. It is not possible for this Court to enter into the vortex of accounts and calculations so as to find out as to what is the actual due amount and at what rate interest was to be charged and as to whether the rate of interest which has been applied by the GSFC is reasonable or not. Suffice it to say that even before us it was frankly admitted by the learned counsel for the appellant that against the loan amount which was received from the GSFC and the Bank of Baroda, not a single paise was paid back to any of these two institutions. It is rather strange to say that the amount could be repaid only after completion of the project. It goes without saying that the appellant failed to repay even a penny against the dues either principal or the interest. Loans by financial institutions like GSFC or Bank are given as a help or aid for the time being so as to be recovered according to the fixed time schedule and on agreed terms and conditions and not be written off and as if not to be recovered. In such cases the principle of payable when able is neither available nor applicable. Money cannot be blocked and it has to remain in circulation. Even if we agree with the argument of the learned counsel for the appellant that the Special Civil Applications were not admitted only for the purpose of settlement and that even if they were admitted only for the purpose of settlement once the petitions were admitted, all the questions were open before the Court, we find that in no way and on no point he could succeed. We do not find that any interference in the facts and circumstances of the case was warranted in exercise of this Court's extra ordinary equitable jurisdiction under Articles 226 and 227 of the Constitution of India. We are in full and complete agreement with the view taken by the learned Single Judge and the reasoning given in his judgement with the details

showing the litigious perseverance of the appellant right from the beginning uptil now without paying back any thing. It appears that the appellant has simply felt emboldened by his success in the earlier litigation and he thinks that the due process of law for recovery of loan can be thwarted by abuse of the process of the Court. In the facts and circumstances of this case, we do not find any reason to interfere with the orders passed by the learned Single Judge. Both these Letters Patent Appeals are, therefore, dismissed.

6. Whereas Letters Patent Appeal No.322 of 2000 itself has been dismissed, there is no question of any stay in Civil Application No.6145 of 2000 and this Civil Application is accordingly disposed of.

7. Two Civil Applications Nos.6146 of 2000 and 6148 of 2000 have been filed by the Managing Director of the Lotus Hotel Pvt. Ltd., i.e. the appellant in the aforesaid Letters Patent Appeals and through Civil Application No.6146 of 2000 in Letters Patent Appeal No.321 of 2000, a prayer has been made to appoint a competent officer of the Court to file a criminal complaint under section 340 of the Code of Criminal Procedure read with sections 193 and 120B of the Indian Penal Code against the respondents and others for making false statements several times and false affidavits and fabricating the documents and evidence with conspiracy. A prayer has also been made seeking compensation of Rs.10,134 lakhs as prayed in para 30, pages 17 and 18 of Civil Application No.6146 of 2000 and an order has also been sought for handing over possession of the property of Lotus Hotels Pvt. Ltd from the respondents forthwith. In other Civil Application No.6148 of 2000 also a similar prayer has been made.

8. Both these Civil Applications have been filed by Chandulal Jethalal Jaiswal, claiming himself to be the Managing Director of Lotus Hotels Pvt. Ltd. and he has argued these Civil Applications in person. The litigious perseverance of the applicant is rather illustrious and writ large in the facts of this case as have been narrated by the learned Single Judge in the order passed in these two Special Civil Applications, whereby the same have been rejected. We find that these Civil Applications are absolutely frivolous and vexatious. Anywhere and at any place if the respondent, GSFC and the respondent Bank of Baroda have mentioned any figures, which according to the applicant, are incorrect, he has sought to brand such entries and such documents as false documents for which the filing of criminal complaint is

sought. The applicant has also submitted that his case is fully covered by a judgement of the Honourable Supreme Court in the case of M.S. Ahlawat v. State of Haryana and another, reported in AIR 2000 SC 168. In the said Supreme Court judgement it has been held by the Supreme Court that the Supreme Court itself can assume the criminal jurisdiction and convict the petitioner without trial, but the procedure provided under sections 195 and 340 of the Code of Criminal Procedure has to be followed. A reference has also been made to Article 142 of the Constitution of India. The proposition of law as has been laid down by the Supreme Court in the aforesaid decision is binding and has to be applied depending upon the facts of the case. However, we find that so far as the facts of the present case for the purpose of these two Civil Applications are concerned, no case whatsoever is made out for directing the complaint to be filed against the respondents. The applicant has repeatedly dragged the financial institutions to litigation, which they can only ill-afford and the only sin or mistake they have committed is that they have asked the return of the loan amount and on applicant's failure to repay, proceedings have taken against him for the recovery of advances. Both these Civil Applications Nos.6146 of 2000 and 6148 of 2000 appear to be wholly misconceived rather ill conceived and we do not find any case for grant of any of the reliefs prayed for in these two Civil Applications. Both these Civil Applications are accordingly rejected.

(M.R. Calla, J.)

31st July 2000 (Ravi R. Tripathi, J.)

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